

UNITED STATES DISTRICT COURT
DISTRICT OF SOUTH DAKOTA
SOUTHERN DIVISION

<p>ANDREW DWIGHT KNODE,</p> <p style="text-align: center;">Plaintiff,</p> <p style="text-align: center;">vs.</p> <p>OFFICER JOSEPH ERICKSON, in his individual and official capacity,</p> <p style="text-align: center;">Defendant.</p>	<p style="text-align: center;">4:19-CV-04181-KES</p> <p style="text-align: center;">ORDER NOTIFYING PLAINTIFF THAT HE MUST PAY THE APPELLATE FILING FEE</p>
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Plaintiff, Andrew Dwight Knode, filed a prisoner pro se civil rights lawsuit under 42 U.S.C. § 1983. Docket 1. Knode notified the court that he was released from the Yankton County jail. Docket 52. Knode filed a notice of interlocutory appeal. Docket 53. At this time, Knode has not moved for leave to proceed in forma pauperis on appeal.

Because Knode is no longer in custody, he is not considered a prisoner under the Prison Litigation Reform Act (PLRA). *See Nerness v. Johnson*, 401 F.3d 874, 876 (8th Cir. 2005). “[I]n forma pauperis status does not require a litigant to demonstrate absolute destitution.” *Lee v. McDonald’s Corp.*, 231 F.3d 456, 459 (8th Cir. 2000). But in forma pauperis status is a privilege, not a right. *Williams v. McKenzie*, 834 F.2d 152, 154 (8th Cir. 1987). Federal Rule 24 of Appellate Procedure requires an appellant seeking to proceed in forma pauperis on appeal to so move in the district court and file an affidavit that: “(A) shows in the detail prescribed by Form 4 of the Appendix of Forms the

party's inability to pay or to give security for fees and costs; (B) claims an entitlement to redress; and (C) states the issues that the party intends to present on appeal." Fed. R. App. P. 24(a)(1).

At this time, Knode has not paid the appellate filing fee of \$505. He has not moved for leave to proceed in forma pauperis and has not filed a financial affidavit. Because Knode no longer falls under the PLRA, he must pay the appellate filing fee in order to appeal.

Thus, it is ORDERED:

1. That Knode must pay the appellate filing fee of \$505 to appeal by May 15, 2021.

Dated April 27, 2021.

BY THE COURT:

/s/ Karen E. Schreier

KAREN E. SCHREIER
UNITED STATES DISTRICT JUDGE